

PT 03-6

Tax Type: Property Tax

Issue: Religious Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

MERRILL AVENUE BAPTIST CHURCH,

APPLICANT

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

No. 01 PT 0105

Real Estate Exemption

For 2000 Tax Year

P.I.N. 26-06-323-002

26-06-504-001 (part)

Cook County Parcels

Kenneth J. Galvin

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Richard C. Baker on behalf of Merrill Avenue Baptist Church;
Mr. Marc Muchin on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether real estate identified by Cook County Parcel Index Numbers 26-06-323-002 and part of 26-06-504-001 (hereinafter the “subject property”) qualify for exemption from tax year 2000 real estate taxes under 35 ILCS 200/15-40, wherein “[a]ll property used exclusively for religious purposes” is exempted from real estate taxation.

The controversy arises as follows: On February 27, 2001, Merrill Avenue Baptist Church (hereinafter the “applicant” or “Merrill”) filed an Application for Property Tax

Exemption for tax year 2000 with the Cook County Board of Review (hereinafter the “Board”). Dept. Ex. No. 2. The Board reviewed the application and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that the applicant be granted a partial year exemption, from May 10, 2000 to December 31, 2000. The Department rejected the Board’s recommendation in a determination dated December 18, 2001 finding that the property was not in exempt use. Dept. Ex. No. 1. On December 21, 2001, applicant filed a timely request for a hearing as to the denial.

On November 19, 2002, the applicant presented evidence at a formal hearing with Austin W. Smith, Pastor of Merrill, presenting oral testimony. Following submission of all evidence and a careful review of the record, it is recommended that the property be granted an exemption for 13% of the 2000 tax year.

FINDINGS OF FACT:

1. Dept. Ex. Nos. 1 through 3 establish the Department’s jurisdiction over this matter and its position that the property was not in exempt use, or being prepared for exempt use in tax year 2000. Tr. pp. 8-9.
2. Austin Smith has been Pastor of Merrill for 10 years. Merrill is currently located at 9100 South Merrill Avenue in Chicago. The congregation consists of 400 members. The church was started in 1879 as the First Baptist Church of South Chicago. Tr. pp. 11-13; App. Ex. No. 3.
3. Merrill is exempt from federal income taxes under section 501(c)(3) of the Internal Revenue Code. Tr. pp. 12-13; App. Ex. No. 1.

4. The applicant was incorporated in the State of Illinois under the “General Not For Profit Corporation Act” on April 17, 1973. Tr. p. 14; App. Ex. No. 2.
5. Merrill operates under a constitution and bylaws. Merrill is affiliated with the Baptist General Conference and the Midwest Baptist Conference. Tr. p. 15; App. Ex. No. 3.
6. Merrill’s purpose is “to bring people to Jesus and membership in his family, develop them to Christ-like maturity and equip them for their ministry in the church and their life mission in the world in order to magnify God’s name.” This is accomplished through worship, Christian education, teaching and outreach to the community. Tr. pp. 16-17; App. Ex. No. 4.
7. Between September and December, 1999, Pastor Smith and the deacon ministry met and interviewed different architectural firms with regard to the cost of building new facilities on the subject property, 3.7 acres of undeveloped land. Merrill received and accepted an estimate of \$6 million to build a church, school and gym on the site. The minutes of a church meeting, held December 14, 1999, state that the owner of the subject property had “signed a contract and while everything looks good, our attorney is awaiting the results of an environmental study before [the] Merrill signs the contract.” Tr. pp. 18-21; App. Ex. No. 8.
8. On November 24, 1999, Merrill contracted with “DMI,” an environmental consulting service for a “Phase I Environmental Site Assessment” of the subject property. This assessment, costing \$1,800, involved soil testing to ensure that the land was appropriate for building. Merrill also retained attorneys and met with 7th Ward Alderman Beavers. Tr. pp. 21-22, 25-26, 28; App. Ex. No. 7D.

9. On May 10, 2000, Merrill purchased the subject property by warranty deed. The address of the subject property is 2600 through 2700 East 95th Street. Tr. pp. 22-23; App. Ex. No. 6.
10. The purchase price of the property was \$205,000. In tax year 2000, Merrill's congregation made pledges toward this purchase price. \$70,000 in pledges was collected in tax year 2000 and the church took out a mortgage on the property. The mortgage on the property has been paid in full through fundraising. Tr. pp. 37-38, 55-56, 62-63.
11. Merrill began fund-raising in 1999. As of September, 2002, 175 pledges had been received totaling \$1,083,229. Of this amount, \$129,878 (12%) had been received. The entire project is estimated to cost \$6.1 million, with the first phase consisting of the construction of a sanctuary and classrooms, costing approximately \$4 million. Merrill's Building Committee, which has been functioning since 1999, is presenting financial packages to Shore Bank and Advance Bank to secure loans for the unpledged amounts. Tr. pp. 38-42; App. Ex. No. 9.
12. On August 18, 2000, Merrill entered into a contract with "Stovall Design Group, Inc." to "provide architectural and engineering services for the preliminary design of a new church facility..." These drawings would be included with Merrill's zoning amendment application to the City of Chicago's Committee on Zoning. Stovall's fee was \$2,300. Merrill paid \$1,000 on August 18, 2000 and \$1,300 on October 9, 2000. Stovall submitted a preliminary site plan for the subject property, which was included with Merrill's zoning request. Tr. pp. 32-33, 61-62; App. Ex. No. 7D(2).

13. On September 28, 2000, Merrill paid \$275 to “Suburban Surveying Service, Ltd.” for a land title survey for the subject property. Tr. pp. 34-35; App. Ex. No. 7D(3).
14. On October 9, 2000, Merrill paid \$520 to “Capital Control Systems.” Capital coordinated the exchange of information between Stovall and Merrill and assisted with the completion of the zoning package. Tr. pp. 36-37; App. Ex. No. 7D(4).
15. On November 13, 2000, Merrill’s zoning amendment was heard by the City of Chicago’s Committee on Zoning. The amendment was granted on February 7, 2001. Tr. pp. 30-32; App. Ex. Nos. 7A, 7B and 7C.
16. In tax year 2000, Merrill contacted “STS Consultants, Ltd.” with regard to a “Phase II Environmental Site Assessment” on the subject property. This assessment consisted of 5 soil borings to provide foundation and subgrade recommendations for the design and construction of the proposed development. STS issued its report on June 29, 2001. Tr. pp. 24, 42-43, 58-59; App. Ex. No. 7(E).

CONCLUSIONS OF LAW:

An examination of the record establishes that Merrill has demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption of the subject property for 13% of the 2000 tax year. In support thereof, I make the following conclusions.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly’s power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and

charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-40 of the Property Tax Code which exempts “[a]ll property used exclusively for religious purposes...” 35 ILCS 200/15-40 (1996). The Illinois Supreme Court defined the term “religious use” as follows:

As applied to the uses of property, a religious purpose means a use of such property by a religious society or persons as a stated place for public worship, Sunday schools and religious instruction.

People ex rel. McCullough v. Deutsche Evangelisch Lutherisch Jehova Gemeinde Ungeanderter Augsburgischer Confession, 249 Ill. 132, 136-137 (1911), (hereinafter “McCullough”). The word “exclusively” when used in section 200/15-40 and other exemption statutes means “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1933).

Applicant's actual use determines whether the property in question is used for an exempt purpose. "Intention to use is not the equivalent of use." Skil Corp v. Korzen, 32 Ill. 2d 249, 252 (1965). However, exemptions have been allowed where property is in the actual process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11 (1924). Adapting and developing a property for an eventual exempt use can be sufficient to satisfy the actual use requirement. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2nd Dist. 1987).

The Department's determination of December 18, 2001, denying Merrill's exemption request was based solely on the Department's conclusion that the property was not in exempt use in tax year 2000. Because the Department denied the exemption solely on lack of exempt use, it is implicit that the Department determined that Merrill owned the subject property and qualified as a "religion." These conclusions were unchallenged in the instant proceeding: Merrill is affiliated with the Baptist General Conference and the Midwest Baptist Conference. Tr. p. 15. Merrill purchased the subject property by warranty deed on May 10, 2000. App. Ex. No. 6. Accordingly, the only real issue is whether the subject property was actually and exclusively used for exempt purposes in tax year 2000.

The evidence presented at the hearing shows that several activities occurred prior to the purchase of the property on May 10, 2000. Between September and December, 1999, Pastor Smith and Merrill's deacon ministry met and interviewed several architectural firms with regard to building new facilities on the subject property. Tr. pp. 20-21. An estimate of \$6 million was submitted and accepted for building a church,

school and gym on the site. Tr. pp. 19-20. The minutes of a December 14, 1999, church meeting state that Merrill had signed a contract with the owner of the subject property and that Merrill was awaiting the results of an environmental study to determine if the land was buildable. Tr. p. 21. On November 24, 1999, Merrill contracted with an environmental consulting service for soil testing. Tr. pp. 26-27. Merrill also retained legal counsel and met with 7th Ward Alderman Beavers with regard to necessary zoning changes. Tr. pp. 22, 28. Merrill's congregation pledged and paid \$70,000 toward the \$205,000 purchase price of the land in tax year 2000 and, at purchase, Merrill took out a mortgage for the remainder of the purchase price. Tr. pp. 37-38. These activities may have been necessary for the development and adaptation of the property but they represent Merrill's intent to use the property for religious purposes because, in this particular case, Merrill could not actually use the property for religious purposes without owning it. Intention to use the property is not the equivalent of actual exempt use. Korzen at 252.

Several activities occurred after the purchase of the property on May 10, 2000. According to Reverend Smith's testimony, after the purchase of the property, Merrill contacted "STS Consultants, Ltd." to do a "Phase II Environmental Site Assessment" on the subject property. Tr. p. 24. This assessment consisted of 5 soil borings to provide foundation and subgrade recommendations for the design and construction of the proposed development. There was no testimony at the hearing as to the exact date in tax year 2000 that Merrill "contacted" STS. There was no testimony at the hearing as to whether the actual borings took place in tax year 2000 or 2001. STS issued its assessment for the subject property on June 29, 2001. Tr. pp. 42-43; App. Ex. No. 7(E).

According to Merrill's counsel, "[Somewhere] in between the discussion [with STS] and the actual report, the physical boring took place." Tr. p. 58. Real estate tax exemptions must begin on a determinable date. The testimony and evidence provided by Merrill with regard to the initial contact with STS and the date of the soil borings is insufficient for me to conclude that actual development and adaptation of the subject property began with either of these activities.

On August 18, 2000, Merrill entered into a contract with Stovall Design Group, Inc. for architectural and engineering services for the preliminary design of the new church facility. These drawings were submitted to the City of Chicago's Committee on Zoning for Merrill's zoning amendment. Tr. pp. 32-33, 61-62. On October 28, 2000, Merrill contracted with Capital Control Systems to coordinate the exchange of information with Stovall and assist with the completion of the zoning package. Tr. pp. 36-37. On November 13, 2000, Merrill's zoning amendment was heard by the City of Chicago's Committee on Zoning and the amendment was granted on February 7, 2001. Tr. pp. 30-32.

I have concluded that actual development and adaptation of the subject property for exempt use began when Merrill's zoning amendment was heard by the City of Chicago on November 13, 2000. This date is the only date offered by Merrill that shows actual adaptation and development of the property for exempt use. No other development work could be done on the subject property without proper zoning. At the time the zoning amendment was heard, the Phase I Environmental Assessment had been completed. The fundraising process was ongoing. An architectural plan had been approved. The zoning request and the above activities demonstrate that the project had

gone beyond a mere intention to convert the property, and actually constituted development and adaptation of the property for exempt use.

WHEREFORE, for the reasons stated above, I recommend that the subject property be exempt from real estate taxes for 13% of the 2000 tax year which represents the period from November 13, 2000, through December 31, 2000, during which the property was in the process of development and adaptation for religious use.

January 23, 2003

Kenneth J. Galvin
Administrative Law Judge